

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**MAR 4 1999**

**PATRICK FISHER**  
Clerk

GARY MILES, doing business as  
Sandoval County Watch Dog,

Plaintiff-Appellant,

v.

BERNIE LUJAN, Chairman of the  
Planning and Zoning Commission of  
Sandoval County, acting under color  
of state law, in his individual capacity  
and official capacities,

Defendant-Appellee.

No. 98-2117  
(D.C. No. CIV-97-969-JP/WWD)  
(D. N.M.)

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**ORDER AND JUDGMENT \***

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Before **PORFILIO** , **BALDOCK** , and **HENRY** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined  
unanimously that oral argument would not materially assist the determination of

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\* This order and judgment is not binding precedent, except under the  
doctrines of law of the case, res judicata, and collateral estoppel. The court  
generally disfavors the citation of orders and judgments; nevertheless, an order  
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34(G). The case is therefore ordered submitted without oral argument.

Plaintiff appeals from the district court's grant of summary judgment to defendant on his civil rights claims, filed pursuant to 42 U.S.C. § 1983. Plaintiff contends that the district court 1) erred in concluding that there were no genuine issues of material fact, and 2) applied the wrong legal standards in examining whether the defendant acted under color of state law.

We review the district court's grant of summary judgment de novo, applying the same legal standard used by that court pursuant to Fed. R. Civ. P. 56(c). *See Kaul v. Stephan* , 83 F.3d 1208, 1212 (10th Cir. 1996). After careful review of the entire record on appeal in light of these standards, and after due consideration of the parties' briefs, we conclude that the district court correctly decided this case.

The judgment of the United States District Court for the District of New Mexico is AFFIRMED.

Entered for the Court

John C. Porfilio  
Circuit Judge